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DEC 18 2007

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 04-27697-D-13L
ALAN AND LINDA ZINK,) Docket Control No. MWB-10
Debtors.) DATE: November 13, 2007
TIME: 1:00 p.m.
DEPT: D (Courtroom 34)

**MEMORANDUM DECISION ON SECOND MOTION FOR APPROVAL OF
ATTORNEYS FEES AND COSTS PAYABLE**

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

Alan and Linda Zink (the "debtors") filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code ("Code") on July 27, 2004. Throughout this case Mark W. Briden, Attorney at Law ("Counsel") has acted as counsel for the debtors and this is Counsel's fourth fee motion. Through this fourth fee motion (the "Motion"), Counsel seeks additional compensation of \$1,170 in fees and \$41.20 in costs. Although no party has filed opposition to the Motion, the court has an independent duty to review all requests for compensation and to determine their reasonableness.

Section 330 of the Code sets out the standard for which courts should determine the reasonableness of attorney's fees. This section provides that in determining the amount of

1 reasonable compensation the court should consider the nature,
2 extent, and value of the services rendered, taking account of all
3 relevant factors, including the time spent on the services, the
4 rates charged for the services, and the customary compensation of
5 comparably skilled attorneys in other cases. Reasonableness is
6 determined by looking at the nature, extent and value of the
7 services rendered. See In re Eliapo 298 B.R. 392, 401 (9th Cir.
8 BAP 2003).

9 In determining reasonableness under § 330(a)(3)(D) of the
10 Code the court is to consider whether services were performed
11 within a reasonable amount of time commensurate with the
12 complexity, importance, and nature of the problem, issue, or task
13 addressed. One component of this analysis requires the court to
14 look at what other competent Chapter 13 practitioners would
15 charge for a Chapter 13 case similar in complexity.

16 "The burden is upon the applicant to demonstrate that the
17 fees are reasonable." In re Basham, 208 B.R. 926, 931-932 (9th
18 Cir. BAP 1997) [citing Hensley v. Eckerhart, 461 U.S. 424, 437,
19 103 S.Ct. 1933, 1941 (1983)].

20 This case started out as a business Chapter 13 because one
21 of the debtors, Alan Zink, ran a small CD music business. Mr.
22 Zink closed his music business within three months of the
23 petition date and obtained employment prior to confirmation of
24 the debtors' Chapter 13 Plan. Throughout the case Mrs. Zink has
25 been employed by Costco. The debt listed in the debtors'
26 schedules is almost exclusively consumer debt. Although there
27 has been a moderate amount of activity in this case, nothing
28 complex, or out of the ordinary has taken place. The activity in

1 this case has consisted of garden-variety motions and objections.
2 Further, the court notes that when considering the original fee
3 that the debtors paid, along with the fees approved under prior
4 fee motions, Counsel has already been paid a total of \$9,796.90.
5 As prior awards were allowed on an interim basis, they are
6 subject to review at this time. Accordingly, the court will
7 consider all prior fee requests, and prior fee awards, in
8 determining the reasonableness of the compensation requested in
9 the Motion.

10 Turning now to Counsel's current fee request. The court
11 notes that Counsel represents Chapter 13 debtors on a regular
12 basis. The court finds that Counsel's hourly rate (\$195 per
13 hour) is reasonable and the court does not have an issue with the
14 quality of Counsel's services. With that said, the court does
15 have a real concern that the aggregate of fees requested in this
16 case exceed the reasonable value of the services rendered.

17 The burden is on Counsel to demonstrate that the fees
18 requested are reasonable and the Motion, and prior fee motions,
19 are void of any analysis or discussion as to the reasonableness
20 of the fees requested. Accordingly, Counsel has not met his
21 burden to demonstrate the fees requested are reasonable. On the
22 contrary, and for the reasons stated below, the court finds the
23 aggregate fee requested in this case is excessive and
24 unreasonable.

25 There are numerous time entries that are excessive. By way
26 of example only, on October 13, 2004 Counsel charged 1.9 hours to
27 "Prepare Docket Number MWB-3 Motion to Confirm First Amended Plan
28 and Notice." Then on September 25, 2007 Counsel charged 1.4

1 hours for "Formulation and Preparation re Docket Number MWB-9 Ex
2 Parte Application to Sell Property and Proposed Order Thereon."
3 Both of these motions are three-page boilerplate pleadings. A
4 review of the time charged for these boilerplate motions leads
5 the court to one of two conclusions. One, that Counsel is
6 extremely inefficient, or alternatively the time charged is
7 grossly inflated. In either event these charges are clearly
8 excessive and unreasonable.

9 However, rather than dissect Counsel's charges line-by-line,
10 or task-by-task, the court chooses to take a more global
11 approach. The court will consider the fees already awarded and
12 the fees sought in the Motion and then consider the complexity of
13 the debtors' case to determine the reasonableness of the
14 aggregate fee request. The court finds that nothing out of the
15 ordinary occurred in the debtors' Chapter 13 case and that it is
16 a routine Chapter 13. The court also finds the total fees
17 requested in this case exceed the reasonable value of services
18 rendered when compared to what other competent practitioners
19 would charge for a Chapter 13 case of similar complexity.

20 The court notes that under the Guidelines for Payment of
21 Attorneys' Fees in Chapter 13 Cases Applicable in the Eastern
22 District of California (the "Fee Guidelines") in effect when this
23 case was filed, the allowed "opt-in" fee for a Chapter 13 case
24 was \$2,500 and \$4,000 for a business case. Although attorneys
25 can "opt-out" of the Fee Guidelines, there is a general
26 presumption that the fixed fee provided for in the Fee Guidelines
27 for attorneys who "opt-in" is sufficient to cover the basic
28 attorney services necessary in a routine Chapter 13 case. See In


1 re Eliapo, supra at 599. In fact, many competent Chapter 13
2 attorneys use the "opt-in" procedure provided for in the Fee
3 Guidelines and provide full representation for the fixed fee.

4 Although Counsel has opted out of the Fee Guidelines, the
5 fixed fee charged by many competent Chapter 13 practitioners is
6 to be considered and used as a guide as to what is reasonable
7 attorney compensation for handling a routine chapter 13 case.
8 The court finds that even when considering that it was necessary
9 for Counsel to respond to motions for relief from stay and to
10 respond to the trustee's motion to dismiss, that reasonable
11 compensation does not exceed the amount Counsel has already been
12 paid, to wit \$9,796. This amount is almost 400% of the fixed fee
13 set under the Fee Guidelines and is a very generous allowance for
14 the services rendered in this case.

15 As Counsel has already been paid \$9,796.90, no additional
16 compensation will be allowed.

17 A separate order will be entered consistent with this
18 memorandum decision.

19 Dated: DEC 18 2007


Robert S. Bardwil
United States Bankruptcy Judge

Certificate of Service

I certify that on DEC 18 2007 a copy of the foregoing document was mailed to the following:

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FOR THE COURT
RICHARD G. HELTZEL
CLERK, U.S. BANKRUPTCY COURT

By: _____


Deputy Clerk